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CMA CGM - CP/HL - APL INDAMEX/APL 3 CROSS
SPACE CHARTER, SAILING AND
COOPERATIVE WORKING AGREEMENT

A Cooperative Working Agreement

FMC Agreement No. 011830-~~004~~005
(~~2nd~~3rd Edition)

Expiration Date: None

Original Effective Date: December 1, 2002

Indamex/APL Agreement

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SPACE CHARTER, SAILING AND
COOPERATIVE WORKING AGREEMENT
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Indamex/APL Agreement CMA CGM - CP/HL -
APL INDAMEX 3 CROSS SPACE CHARTER, SAILING AND COOPERATIVE WORKING
AGREEMENT

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Article 1: NameNAME.

The full name of this Agreement is the Indamex/APL Agreement (CMA CGM --
CP/HL -- APL INDAMEX 3 CROSS SPACE CHARTER SAILING AND COOPERATIVE
AGREEMENT, or the "Agreement", or the "FMC Agreement."

Article 2: PurposePURPOSE.

The purpose of this Agreement is to provide authority for the Parties to discuss and formulate cooperative service arrangements in the Trade, and to offer quality direct liner services, in terms of frequency and rotation.

Article 3: PartiesPARTIES.

The names and addresses of the principal offices of the parties to the Agreement are the following:

- {
1) CP Ships (UK) Limited ("CP Ships")
2 City Place
Beehive Ring Road
Gatwick, West Sussex
RH60PA
United Kingdom

{2And

Hapag-Lloyd Container Linie GmbH
Ballindam 25,
20095 Hamburg

Germany

Hereinafter referred to collectively as "CP/HL"

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2 CMA CGM S.A. ("CMA CGM")
4, Quai D'Arenc
13235 Marseille Cedex 02
France

and

{3- APL Co., Pte Ltd/American President Lines, Ltd.(collectively "APL")
456, Alexandra Road
#0600
NOL Building
Singapore 119962

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{hereinafter be referred to individually as "Party" and collectively as "Parties"). "

Article 4: Geographic ScopeGEOGRAPHIC SCOPE.

This Agreement shall cover transportation between ports on the East Coast of the United States (Eastport, Maine to Key West, Florida) and U.S. inland and coastal points served via such ports, on the one hand, and (i) ports and points in India, Pakistan, Sri Lanka, and the Bangladesh to Philippines range (South East Asia); (ii) ports and points in countries bordering the Mediterranean Sea and in Portugal; and (iii) ports and points in countries bordering the Red Sea and in the United Arab Emirates, on the other hand.

All of the foregoing is referred to herein as the "Trade". It is understood that each of the Parties may utilize space available to it under this Agreement for the carriage of cargo originating in and/or destined to countries outside the Trade.

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Article 5: Overview of Agreement Authority.

~~5.1 The Parties are authorized to meet, exchange information, discuss, negotiate and agree upon the formulation of any lawful agreement permitting the rationalization of service, equipment or capacity in all or any part of the Trade by slot charter, joint service or otherwise; provided, however, that no such agreement may become effective until all governmental conditions required to be fulfilled prior to its effectiveness shall have been fulfilled.~~

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Article 5: OVERVIEW OF AGREEMENT AUTHORITY.

5.1 Vessel Schedule/Port Rotation. The parties are authorized to discuss and agree on ports to be called and port rotation and to change any port rotation so agreed upon by unanimous consent of the parties. The port rotation may be changed by unanimous consent of the parties without a further amendment to this agreement. The parties are authorized to discuss and agree on the phasing-in/phasing-out of vessels for maintenance, whether programmed or unprogrammed. The parties also are authorized to discuss and agree on criteria to measure adherence to any agreed-upon schedule and remedial actions/consequences in the event of non-adherence.

5.2 Space and Vessels.

(a) ~~Subject to Article 5.2(d), the~~The Parties shall employ seven (7) vessels of approximately ~~2500/3000~~3500/4200 TEU capacity Eastbound (~~average 14 gwt per~~ TEU) and approximately ~~3000/3500~~ TEU capacityand Westbound (average ~~11~~10.5 gwt per TEU). The vessels shall be compatible in terms of actual TEU intake and speed capability, able to complete the intended port rotation within 49 days, thus providing a service frequency of approximately 7 days. The Parties are authorized, by unanimous agreement, to revise the average gwt per TEU used for purposes of this Agreement without making any further amendments hereto.

(b) The seven vessels will be provided as follows:

-APL 2 vessels

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~~CMA CGM 2 vessels (of which one 1 vessel is being deployed)~~ may be provided by CMA CGM's wholly owned subsidiary, MacAndrews & Company Limited pursuant to agreement between CMA CGM and MacAndrews. In the event that MacAndrews becomes a party to another agreement covering the same Trade as this Agreement and such service becomes operationally effective, then any vessel provided by MacAndrews on behalf of CMA CGM as a vessel provider in this Agreement will be replaced by a CMA CGM vessel. The provision of such vessel by MacAndrews on behalf of CMA CGM is totally without prejudice to CMA CGM's obligations under this Agreement as a vessel provider and CMA CGM assumes all responsibility as vessel provider hereunder for any such vessel provided by MacAndrews.)

~~CP-Ships/HL~~ 2 vessels

The seventh vessel shall be provided jointly ~~be~~by CMA CGM and CP/HL Ships, who are authorized to discuss and agree from time to time on the terms and conditions upon which such vessel shall be provided. ~~In the event the number of vessels deployed hereunder is increased pursuant to Article 5.2(d), the Parties shall agree on the provision of the additional vessels~~ Each Party shall be responsible for all costs associated with operation of its vessels including, but not restricted to, charter hire, bunker, port and Suez Canal costs, dry docking and repair costs, and insurance costs.

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~~e) According to clause 6.2 here below, in case the Agreement is extended, Parties shall discuss and possibly review tonnage provision, without further amendment.~~

~~d) Without further amendment, the number and size of vessels to be operated hereunder may be increased up to ten (10), each with an approximate capacity of not more than 4500 TEUs, subject to agreement of the Parties.~~

e(c) The Parties will operate a slot exchange agreement in which each of them is entitled to space in proportion to its contribution of slots ("basic slot allocation"). It will be monitored over a cycle in each direction. The Parties are authorized to agree to adjust structurally their basic slot allocations up or down by up to 25% without further amendment to this Agreement. ~~In addition, APL shall sell CMA CGM approximately 150 slots (depending on the agreed average gwt per TEU) per sailing from within APL's basic slot allocation on a used/unused basis through the end of the vessel cycle to be completed on or about June 30, 2006.~~

f(d) Any over/under provision of capacity or further sale or purchase of slots between the Parties from within their respective basic slot allocations will be paid for

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at slot rates to be agreed. In the event that the vessels' capacity is restricted due to known port draft or other mutually agreed operational restrictions, then the restricted

capacity will be allocated in proportion to each Party's allocated share of space on each vessel of each Party.

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Original Page No. 5g) The Parties may agree on the number of sailings, schedules, ports called and frequency of port calls for their vessels in the Trade. Initially, the port rotation is intended to be as follows:
Colombo/~~Tuticorin~~ / ~~Nhava Sheva~~ / ~~via~~ Mundra*
~~-(Suez Canal/ Transit) - New York/ - Norfolk/ -~~
~~Charleston or Savannah/ - Port Said/ via - (Suez~~
~~Canal/ Transit) - Colombo~~

* The Mundra call will be performed upon an ad hoc basis (to be agreed) during the first cycle of this Agreement, but will become a structural Base Port of call with effect from the commencement of the second cycle.

(f) CMA CGM, CP/HL and APL shall be entitled to release slots to their 100% wholly owned VOCC subsidiaries and/or affiliated group companies sharing common ownership as from the start of this Agreement. The selling Party is to advise the other two Parties in writing at least 2 weeks prior the first loadings so as to avoid and operational / booking distortions.

h(g) None of CP-Ships/HL, CMA CGM, APL nor any Party's wholly owned subsidiary, affiliate company or other member of a group of shipping companies (either acting as VOCC or NVOCC in the United States) receiving slots from any Party's entitlement under the present Agreement, may provide space made available to it hereunder to a non-Party ocean common carrier without the prior consent of the other two Parties. If the other two Parties consent to making space available to such

~~non-parties, such space will be provided on such terms as all Parties agree; provided, however, that (i) CP Ships shall not require the consent of the others to provide space to other CP Ships carriers; and (ii) CP Ships and CMA CGM shall not require the consent of APL to make space available to Hapag Lloyd. The terms on which space may be provided to other CP Ships carriers or Hapag Lloyd under this Article 5.2(h) shall not require the agreement of the other Parties. Nothing herein shall authorize any other CP Ships carrier or Hapag Lloyd to sub-charter space provided to it hereunder to another carrier. APL shall not require the consent of the other Parties to allocate and share space as between APL Co. Pte Ltd and American President Lines, Ltd. CMA CGM shall not require the consent of the other Parties to allocate space to affiliated and~~

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non-Party ocean common carrier without the prior consent of the other two Parties.
Parties shall not require the consent of the other Parties to allocate space to affiliated
and wholly owned subsidiary companies.

5.3 Facilities, Services and Supplies.

The Parties are authorized to ~~enter into exclusive, preferential, or cooperative working arrangements with marine terminal operators and any person relating to~~

~~marine terminal, stevedoring or other shoreside services. The Parties agree that they shall, where possible, negotiate jointly stevedoring terms and conditions at direct ports of call discuss and agree on the joint and/or individual negotiation of appropriate contracts with terminal operators and stevedores, and to reach agreement on other issues relating to the loading and/or discharge of cargo, such as but not restricted to common costs including but not limited to overtime, stand-by-time, and idle time.~~

Nothing herein, however, shall authorize the Parties jointly to operate a marine terminal in the United States.

5.4 Operational Considerations.

~~(a) CP Ships/HL, APL and CMA CGM shall book cargoes subject to this Agreement for their separate accounts and shall issue their own separate bills of lading.~~

~~(b) SCI, CP Ships, APL and CMA CGM agree that none of them or their affiliates and/or wholly owned subsidiaries will commence or enter into a separate service with any other ocean common carrier that competes directly with the service and route provided under this Agreement between India/Sri Lanka and the U.S. East Coast; provided, however, that such agreement does not preclude operation of pre-existing services or any of the following (the inclusion of a service in paragraphs (i) through (v) below is not intended to imply that all such services are directly competitive):~~

~~(i) CP Ships and CMA CGM from continuing their participation in the EPIC Consortium and/or the service they operate in the Trade from Indian subcontinent via Singapore to the Mediterranean/UK/North~~

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~~Europe/U.S. East Coast (westbound only) in conjunction with Marfret and P&O Nedlloyd or its replacement;~~

~~—— (ii) CMA CGM from continuing its service from Colombo to the Mediterranean in conjunction with Norasia or its replacement and its service between the Mediterranean and the U.S. East and Gulf Coasts in conjunction with Maersk Sealand and APL or its replacement;~~

~~(iii) CMA CGM from continuing its service between Far East ports and ports in Panama, Jamaica and on the U.S. East Coast in conjunction with P&O Nedlloyd and China Shipping Group; or its replacement;~~

~~—— (iv) APL from continuing to use ships operated by or in cooperation with Mitsui O.S.K. Lines, Ltd., Hyundai Merchant Marine, Ltd., Matson Navigation Company, Evergreen Marine Corp., CP Ships USA, LLC, Maersk Sealand and/or CMA CGM to provide all water or land/water service calling the U.S. East Coast, South East Asia or Mediterranean;~~

5.5 Parties shall use their best endeavours to reach satisfactory level of on-time service performance at all ports of call by jointly design, review and optimize service rotations and all related operation arrangement.

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5.6 Administration and Implementation.

(a) The Parties may implement this Agreement by meetings, writings and other communications between them, and may make such other arrangements as may be necessary or appropriate to effectuate the purposes and provisions of this Agreement.

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(b) The Parties, in implementing this Agreement, may agree on their respective rights, liabilities, and indemnities arising under this Agreement including, but not limited to, matters such as failure to perform, force majeure, and insurances. The phase-in of tonnage will be conducted in a smooth and economic manner and be completed as soon as possible. The Party phasing-in the tonnage will bear the phase-in costs.

5.7 Further Agreements.

Pursuant to 46 C.F.R. §535.408(b), any further agreement reached pursuant to authority contained in this Agreement will not be implemented until it has been filed with the Federal Maritime Commission and become effective under the Shipping Act of 1984, as amended (if such filing is legally required).

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Article 6: ~~Membership, Withdrawal and Readmission.~~ MEMBERSHIP,
WITHDRAWAL AND READMISSION.

~~6.1 — An ocean common carrier shall be admitted to membership in this Agreement upon unanimous agreement of the Parties hereto.~~

~~6.2~~ 6.1 Any Party may withdraw from this Agreement by providing not less than threesix (36) months prior written notice to the other Parties-; provided, however, that no such notice may be given prior to eighteen (18) months after April 27, 2006.

~~6.3 — Any Party may be expelled from this Agreement by a majority vote of all Parties in the event of:~~

- ~~a. A deliberate material breach of the Agreement by the breaching Party;
or~~

~~_____ Indamex/APL Agreement~~

6.2 If at any time during the term of this Agreement any Party (the "affected" Party) is either (i) dissolved or becomes insolvent or (ii) has a winding up order made against it or enters into liquidation either voluntarily or compulsorily or (iii) seeks or becomes subject to the appointment of an administrator, receiver, trustee, custodian or other similar official for the whole or a substantial part of its assets or business, or (iv) is affected by any similar event or act under the applicable laws either of the jurisdiction in which it carries on business or (v) any such event or act has an analogous effect in any other jurisdiction or (vi) if such Party takes any action in furtherance of any of the

foregoing acts or events (other than for the purposes of a consolidation, reconstruction or amalgamation) and the other Parties are of reasonable opinion that such event or occurrence is or may be materially detrimental to this Agreement, or that sums owing under this Agreement (other than those disputed in good faith) may not be paid in full or that their payment may be significantly delayed, then the other Parties may give written notice to the affected Party terminating this Agreement with immediate effect or to suspend this Agreement or any part thereof for such period as such the other Parties in their reasonable discretion deem appropriate, but without

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- ~~b. A material breach of the Agreement caused by acts of negligence or omission of the breaching Party; or~~
- ~~c. Failure to maintain an ocean common carrier service within the Scope of this Agreement for a period of ninety (90) consecutive days (strikes and Force Majeure excepted); or~~
- ~~d. Failure to abide by the terms and conditions of this Agreement.~~

~~No expulsion shall become effective until the expelled Party has been furnished with a detailed statement setting forth the reason or reasons therefore, a copy of such statement has been submitted to the FMC, and, to the extent required by law, an appropriate amendment to FMC Agreement reflecting the membership change has~~

~~become effective. Similarly, any Party affected by a material breach resulting from the conduct specified in paragraphs (a) through (d) above may withdraw from this Agreement by giving ninety (90) days notice to the other Parties. In case a breaching Party is expelled by majority vote and one of the non-breaching Parties exercises its right to resign as provided for in this Article 6.3, then the remaining Parties shall discuss the future of the Agreement. If the remaining Parties do not reach agreement on the future structure of the service prior to the effective date of the resignation of the non-breaching Party, then the Agreement shall automatically terminate.~~

prejudice to any accrued rights and obligations hereunder.

6.3 ~~6.4~~ If at any time during the ~~period~~term of this Agreement any one Party ("Affected Party") should become bankrupt or insolvent or have a receiving order made against it, suspend payments, or continue its business under a receiver for the benefit of ~~any~~there shall be a change in the ownership or ultimate control of a Party or an agreement has been entered into for such a change of ownership or ultimate control ("Affected Party"), then the other Parties may, within six months of becoming aware of the change in ownership or control or the existence of the agreement to effect such change, terminate the Agreement by giving not less than three months' notice in writing.

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For the purposes of this Article 6.3, a change in the control or material change in the ownership of a Party or of the holding company of that Party shall not include:

- o Any public offering of shares in that Party or its holding company
- o Any purchase or sale of shares in that Party or its holding company of less than

30% of the issued share capital of that company or its holding company.

Notwithstanding the above, the acquisition of CP Ships (UK) Limited by TUI. A.G. is known to the Parties, and it is expressly agreed that any subsequent merger or restructuring of CP Ships (UK) Limited and Hapag-Lloyd Container Linie GmbH within TUI A.G. shall not be deemed a change of ownership or control for the purposes of this Article.

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~~of its creditors or if a petition is presented or a meeting convened for the purpose of considering a resolution, or other steps are taken for the winding up of the Affected Party, or any event similar to any of the above shall occur under the laws of the Affected Party's country of incorporation, the other Parties are entitled by mutual consent to forthwith exclude the Affected Party from the Agreement. It is expressly understood and agreed that termination and/or withdrawal from the Agreement for any reason whatsoever shall in no way prejudice or affect the terms and conditions of the final accounting or reconciliation of outstanding amounts owed between the Parties.~~

~~6.5 — Any Party may be expelled from this Agreement pursuant to the provisions of Article 6.3 if it has not complied with agreed payment procedures for slots purchased from another Party pursuant to Article 5.2.e (imbalance between tonnage provided and received allocation).~~

~~Article 7: — Voting.~~ Article 7: DURATION AND TERMINATION.

7.1 This Agreement shall take effect the date it becomes effective under the Shipping Act of 1984 as amended.

~~— Decisions under this Agreement, including amendments thereto, shall be by~~

unanimous vote of all Parties participating in the Agreement.7.2 This Agreement shall remain in force until at least April 27, 2008, and indefinitely thereafter unless terminated in accordance with the provisions hereof:

[1] Unless terminated pursuant to stipulations of Article 6,

(2) Unless terminated by two of the Parties due to the default of the third Party as determined by the non-defaulting Parties in good faith

[3] Unless terminated at any time by the unanimous written consent of the Parties.

Notwithstanding the aforementioned, the Agreement will terminate, unless otherwise unanimously agreed, upon completion of a full roundtrip cycle (WB+EB), meaning that all vessels of the concerned cycle departing from the first port of loading in the westbound direction after the date of termination will sail under the terms of this Agreement.

Article 8: ~~Duration and Termination~~ COMPLIANCE WITH US REGULATIONS

8.1 ~~Subject to clause 6.2, this Agreement shall remain in effect unless terminated by the unanimous agreement of the Parties~~At all times, the Parties to this Agreement shall comply with the United States Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998 and any other United States Regulatory Law, where applicable.

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~~8.2 — In the event of war, Act of God, port closures, act of public enemies, arrest or restraint of princes, rulers and peoples, strikes, lockouts, or any other event whatsoever which cannot be avoided or guarded against and which renders the performance of this Agreement wholly or substantially impracticable, this Agreement shall not thereby be terminated, but the performance thereof shall be suspended (in whole or in part as appropriate) until such time as the performance thereof is again practicable, without prejudice to any rights, liabilities and obligations accrued at the date of suspension. Should this Agreement be wholly suspended for a period exceeding six (6) calendar months from the date of the commencement of such suspension or partially suspended for a period exceeding ten (10) calendar months, each Party may resign from the Agreement by giving a 30 days' written notice.~~

8.2 Customs-Trade Partnership Against Terrorism (C-TPAT)

Each Party shall be and remain a member in good standing of the C-TPAT program during the period of this Agreement, and shall undertake all reasonable steps to qualify for "green lane" treatment by U.S. Customs and Border Protection under C-TPAT and/or similar voluntary partnership programs.

8.3 Sea Carrier Initiative Agreement

The Parties hereto warrant to each other that they are signatories to the United States Customs Sea Carrier Initiative Agreement. In the event that any Party fails to

remain a signatory to said Agreement, it shall identify, defend and indemnify the other Parties against all costs, expenses, penalties and fines arising from such failure to remain a signatory to said Sea Carrier Initiative Agreement.

Article 9: ~~Applicable Law~~ SEPARATE MARKETING

Each Party shall retain its separate identity and shall have separate sales, pricing and marketing functions. Each Party shall issue its own Bill of Lading.

Article 10: NON ASSIGNMENT

No Party shall assign or transfer its rights or obligations under this Agreement either in part or in full to any third party, firm or corporation without the prior written consent of both of the other Parties.

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Article 11: APPLICABLE LAW.

The interpretation, construction and enforcement of this Agreement, and all rights and obligations between the Parties under this Agreement shall be governed by English Law, but always subject to the application of the U.S. Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998 and any other U.S. regulatory law.

Notwithstanding anything to the contrary in this Article ~~9,11~~, any dispute between the Parties relating to loss or damage to cargo or containers shall be dealt as per Article 12.

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Article 10: ~~Arbitration.~~ 12: ARBITRATION.

~~Any controversy or dispute (including cargo and container claims) between the Parties arising out of or relating to~~ in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act of 1996 of the United Kingdom and ~~any re-enactments and amendment thereto~~ or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Article.

~~Any claim up to \$ 300,000~~ The arbitration shall be referred to ~~conducted in accordance with the LMAA (London Maritime Arbitration Association) Small Claim Procedure.~~ Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

~~Higher claims shall be referred to the LMAA normal procedure.~~

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Arbitration shall be before a single arbitrator acceptable to all Parties to the

dispute. In the event the Parties involved in the dispute are unable to reach an agreement on a single arbitrator, the arbitrator shall be appointed by the LMAA President of the LMAA at the time of commencement of arbitration upon application of any of the Parties.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 300,000 the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

implement or effectuate any agreement regarding chartering or exchange of space, rationalization and related coordination and cooperative activities pertaining to their carrier operations and services, and related equipment, vessels and facilities in the Trade. In furtherance of the foregoing, the parties are authorized to engage in the following activities:

1. Vessels.

(a) Agree upon the type, capacity, speed, and total number of vessels to be used hereunder, the type, capacity, speed, and number of vessels to be contributed by each party, and the terms, conditions and operational details pertaining thereto; provided that the maximum number of linehaul vessels to be contributed for operations hereunder shall be one hundred (100) ~~eighty (80)~~, such vessels to have standard operating capacities not to exceed 9000 ~~8000~~ TEU's.

(b) Agree upon the sailing patterns, ports to be called, vessel itineraries, the number, frequency, and character of sailings at ports, transit times, and all other matters related to the scheduling and coordination of vessels;

(c) Agree upon the chartering, hiring, establishment, use, scheduling and coordination of transshipment, barge and feeder services, in conjunction with linehaul vessel operations hereunder;

(d) Agree upon the chartering of vessels by one or more parties for use in operations hereunder, or the chartering of vessels among the parties;

(e) Coordinate and agree to provide advance notice and agree upon other terms and conditions with respect to a party's withdrawal of a vessel(s) or its introduction of substitute or replacement vessels or newbuildings in the Trade;